



Entered on Docket
July 06, 2006

Bruce A. Markell

Hon. Bruce A. Markell
United States Bankruptcy Judge

Annette W. Jarvis, Utah Bar No. 1649
RAY QUINNEY & NEBEKER P.C.
36 South State Street, Suite 1400
P.O. Box 45385
Salt Lake City, Utah 84145-0385
Telephone: (801) 532-1500
Facsimile: (801) 532-7543
Email: ajarvis@rqn.com
and
Lenard E. Schwartz, Nevada Bar No. 0399
Jeanette E. McPherson, Nevada Bar No. 5423
Schwartz & McPherson Law Firm
2850 South Jones Boulevard, Suite 1
Las Vegas, Nevada 89146-5308
Telephone: (702) 228-7590
Facsimile: (702) 892-0122
E-Mail: bkfilings@s-mlaw.com
Attorneys for Debtors and Debtors-in-Possession

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re:
USA COMMERCIAL MORTGAGE COMPANY,
Debtor.

In re:
USA CAPITAL REALTY ADVISORS, LLC,
Debtor.

In re:
USA CAPITAL DIVERSIFIED TRUST DEED FUND,
LLC,
Debtor.

In re:
USA CAPITAL FIRST TRUST DEED FUND, LLC,
Debtor.

In re:
USA SECURITIES, LLC,
Debtor.

Case No. BK-S-06-10725 LBR
Case No. BK-S-06-10726 LBR
Case No. BK-S-06-10727 LBR
Case No. BK-S-06-10728 LBR
Case No. BK-S-06-10729 LBR

Chapter 11

Jointly Administered Under
Case No. BK-S-06-10725 LBR

SCHWARTZ & MCPHERSON LAW FIRM
2850 South Jones Boulevard, Suite 1
Las Vegas, Nevada 89146-5308
Tel: (702) 228-7590 · Fax: (702) 892-0122

Affects:

- ☐ All Debtors
- ☒ USA Commercial Mortgage Company
- ☐ USA Securities, LLC
- ☐ USA Capital Realty Advisors, LLC
- ☐ USA Capital Diversified Trust Deed Fund, LLC
- ☐ USA First Trust Deed Fund, LLC

ORDER APPROVING MOTION AUTHORIZING DEBTOR, PURSUANT TO 11 U.S.C. § 105 AND § 363(b)(1), TO ACCEPT LOAN PAYMENT PROCEEDS AND PROVIDE PARTIAL OR FULL RELEASES IN CONNECTION WITH THE SALE OF PROPERTIES SECURING LOANS ORIGINATED BY THE DEBTOR TO THIRD-PARTY BORROWERS, AND TO RATIFY PARTIAL RELEASES PREVIOUSLY PROVIDED BY THE DEBTOR [AFFECTS USA COMMERCIAL MORTGAGE CO.]

Before the Court is the Motion Authorizing Debtor, Pursuant to 11 U.S.C. § 105 and § 363(b)(1), to Accept Loan Payment Proceeds and Provide Partial or Full Releases in Connection With the Sale of Properties Securing Loans Originated by Debtor to Third-Party Borrowers, and to Ratify Partial Releases Previously Provided by the Debtor (the "Motion") filed on May 3, 2006, as Docket No. 135, by Debtor and Debtor-in-Possession USA Commercial Mortgage Company ("Debtor"). The Motion sought authorization pursuant to 11 U.S.C. § 105 and 11 U.S.C. § 363(b)(1), for the Debtor to exercise its powers on behalf of the lenders of the loans outlined in the Motion (the "Direct Lenders") to accept loan payment proceeds and provide the necessary partial releases or full releases and other related documentation required in connection with the sale to bona fide purchasers of properties securing loans originated by the Debtor for the specific nine (9) loans outlined in the Motion (the "Nine Loans") as well as for other loans that have been originated by the Debtor, and for ratification by the Court of any partial releases already provided by the Debtor postpetition for any of the Nine Loans. The Nine Loans are to the following borrowers: (1) The Gardens, LLC, a Florida limited liability company; (2) University Estates, Inc., an Ohio corporation; (3) Bay Pompano Beach, LLC, a Florida limited liability company; (4) 60th Street Venture, LLC, a California limited liability company; (5) 5252 Orange, LLC, a California limited liability company; (6) 5055 Collwood, LLC, a California limited liability company; (7) Gramercy Court, Ltd., a Texas limited partnership; (8) Opaque Land Development, LLC, a Nevada limited liability company; and (9) Roam Development Group, L.P., a Texas limited partnership. Several oppositions to the Motion (the "Objections") were filed on or before May 17, 2006, including the Limited Opposition/Response filed by

1 the Official Committee of Equity Security Holders of USA Capital First Trust Deed Fund, LCC, filed on
 2 May 15, 2006 as Docket No. 341. The Debtor filed the Second Supplemental Declaration of Thomas J.
 3 Allison in Support of Debtors' Motions and a Reply Brief in support of the Motion on May 17, 2006. At
 4 the hearing held on May 18, 2006, numerous appearances were made upon the record, testimony and other
 5 evidence were presented and arguments were made concerning the Motion.

6 The Court having considered the Supplemental Declaration of Thomas J. Allison and the Second
 7 Supplemental Declaration of Thomas J. Allison and exhibits thereto in support of the Motion, the
 8 arguments set forth in the Motion and in the Reply, the evidence presented and arguments made at the May
 9 18, 2006 hearing, and other facts of record in the Debtors' bankruptcy cases, and finding that notice of the
 10 Motion was adequate and proper, it is hereby

11 ORDERED that the Motion is GRANTED as follows, in that:

12 1) The Debtor is authorized after the date of this Order to accept loan payment proceeds and
 13 provide the necessary partial releases or full releases and other related documentation required in
 14 connection with the sale to bona fide purchasers of properties securing the Nine Loans originated by the
 15 Debtor upon the following conditions: (a) the partial releases or full releases must be in accordance with
 16 the governing loan documents; (b) the loan for which a partial release is requested must be a performing
 17 loan at the time that the partial release is given; (c) the Debtor must either receive commercially reasonable
 18 assurances from the borrower requesting the partial release or full release that the requested partial release
 19 or full release is in accordance with the governing loan documents and there are no defenses available to
 20 the Debtor to the request for the partial release or full release, or the Debtor through independent due
 21 diligence consistent with commercially reasonable practices prior to the release must satisfy itself that the
 22 requested partial release or full release is in accordance with the governing loan documents and there are no
 23 defenses available to the Debtor to the request for the partial release or full release; and

24 2) All loan payment proceeds that the Debtor receives as loan servicer pursuant to the
 25 requests for partial releases and full releases shall be held in the segregated collection account (the
 26 "Collection Account") that has been opened up by the Debtor, and all loan payment proceeds shall be
 27 accounted for by the Debtor separately on a loan by loan basis (provided, that the Debtor is not required to
 28

1 separately segregate the loan payment proceeds in separate subaccounts of the Collection Account, but all
2 loan payment proceeds shall be deposited into a single Collection Account); and

3 3) The Collection Account funds shall not be commingled with any operating funds of Debtor
4 or any of its affiliates, and the Debtor shall only transfer from the Collection Account to the Debtor's
5 separate operating account the amounts that were approved by this Court for transfer to the Debtor pursuant
6 to the Second Order Approving Debtors' Proposed Cash Management Procedures and Cash Usage that was
7 entered by this Court on May 22, 2006 as Docket No. 315, or such amounts that are approved by this Court
8 for transfer to the Debtor by a separate Order entered in the future; and

9 4) All liens, rights and interests that the Direct Lenders and any other third party, including
10 USA Capital First Trust Deed Fund LLC, have in any collateral that is being released as a result of the
11 Debtor providing partial releases or full releases shall attach to the loan payment proceeds that the Debtor
12 receives as loan servicer and that are deposited into the segregated Collection Account with the same
13 priority, validity and enforceability that existed prior to such release, and Debtor's contractual rights and
14 any other rights to collect servicing fees and other fees from the loan payment proceeds that the Debtor
15 receives as loan servicer shall also attach to such loan payment proceeds as they are deposited into the
16 segregated Collection Account with the same priority, validity and enforceability that existed prior to such
17 release; and

18 5) Debtor will provide as part of its monthly operating reports to be filed with the Court the
19 following information: (a) the actual loan payment proceeds and other funds that Debtor actually receives
20 in connection with the partial releases and full releases given to borrowers on any loan and an accounting
21 for such funds on a loan by loan basis; and (b) for any loan where there is a senior lienholder and a
22 subordination agreement, the amount of the sale proceeds that are distributed to any senior lender on such
23 loan pursuant to such subordination agreement and the resulting amount outstanding on the loan to such
24 senior lender after such loan proceeds are distributed to such senior lender; and

25 6) No borrower is entitled to rely upon any partial release or full release that was executed by
26 Debtor's former management prior to April 13, 2006 (the "Petition Date") to be effective for any sale of
27 collateral that occurred after April 13, 2006, but such borrower must instead apply to the Debtor for a new
28 partial release or full release to be issued in compliance with the conditions outlined in this Order; and

7) The partial releases and full releases issued by the Debtor after April 13, 2006, and prior to the date of this Order, for the Nine Loans are hereby approved and ratified by the Court; and

8) The loan payment proceeds that are paid by borrowers or other parties in exchange for any partial releases or full releases that are authorized pursuant to this Order shall be paid to the Debtor as loan servicer and such payments shall be applied and accounted for as described in Paragraphs 2, 3 and 5 above of this Order and in accordance with the governing documents.

Submitted by:

Annette W. Jarvis, Utah Bar No. 1649
RAY QUINNEY & NEBEKER P.C.
36 South State Street, Suite 1400
P.O. Box 45385
Salt Lake City, Utah 84145-0385

and

Leonard E. Schwartz
Jeanette E. McPherson
SCHWARTZER & MCPHERSON LAW FIRM
2850 South Jones Boulevard, Suite 1
Las Vegas, Nevada 89146-5308
Attorneys for Debtors and Debtors-in-Possession

Approved/Disapproved by

Robert C. LePome, Esq.
330 S. Third St., #100B
Las Vegas, NV 89101
Attorney for Stanley Alexander Trust, Drs. Stanley
Alexander And Florence Alexander

Approved/Disapproved by:

BECKLEY SINGLETON, CHTD.

By:

BRETT A. AXELROD, ESQ.
ANNE M. LORADITCH, ESQ.
530 Las Vegas Boulevard South
Las Vegas, NV 89101
Special Nevada Counsel for the Official
Committee of Equity Security Holders of USA
Capital Diversified Trust Deed Fund, LLC

Approved/Disapproved by

Office of the U.S. Trustee
Foley Federal Building
300 Las Vegas Blvd. South, Suite 4300
Las Vegas NV 89101

Approved/Disapproved by:

GORDON & SILVER, LTD.

By:

GERALD M. GORDON, ESQ.
GREGORY E. GARMAN, ESQ.
3960 Howard Hughes Parkway, 9th Floor
Las Vegas, Nevada 89109
Counsel for the Official Committee of Holders of
Executory Contract Rights of USA Commercial
Mortgage Company

SCHWARTZER & MCPHERSON LAW FIRM

2850 South Jones Boulevard, Suite 1

Las Vegas, Nevada 89146-5308

Tel: (702) 228-7590 - Fax: (702) 893-0023

ORDER APPROVING MOTION AUTHORIZING DEBTOR, PURSUANT TO 11 U.S.C. § 105 AND § 363(D)(1), TO ACCEPT LOAN PAYMENT PROCEEDS AND PROVIDE PARTIAL OR FULL RELEASES IN CONNECTION WITH THE SALE OF PROPERTIES SECURING LOANS ORIGINATED BY THE DEBTOR TO THIRD-PARTY BORROWERS, AND TO RATIFY PARTIAL RELEASES PREVIOUSLY PROVIDED BY THE DEBTOR [AFFECTS USA COMMERCIAL MORTGAGE CO.]

Approved/Disapproved by:

ORRICK, HERRINGTON & SUTCLIFFE LLP

By:

MARC A. LEVINSON, ESQ.
LYNN TRINKA ERNCE, ESQ.
400 Capitol Mall, Suite 3000
Sacramento, California 95814-4407
*Counsel for the Official Committee of Equity
Security Holders of USA Capital Diversified
Trust Deed Fund, LLC*

Approved/Disapproved by:

STUTMAN TREISTER & GLATT, P.C.

By:

FRANK A. MEROLA, ESQ.
EVE KARASIK, ESQ.
CHRISTINE PAJAK, ESQ.
1901 Avenue of the Stars, 12th Floor
Los Angeles, California 90067
*Counsel for the Official Committee of Equity
Security Holders of USA Capital First Trust
Deed Fund LLC*

Approved/Disapproved by:

LIONEL SAWYER & COLLINS

By:

LAUREL E. DAVIS, ESQ.
300 S. Fourth Street, #1700
Las Vegas, Nevada 89101
Counsel for Scott Canepa

Approved/Disapproved by:

GOLDSMITH & GUYMON, P.C.

By:

MARJORIE GUYMON, ESQ.
2055 N. Village Ctr. Cir.
Las Vegas, Nevada 89134
Counsel for Mountain West Mortgage, LLC

Approved/Disapproved by:

LEWIS AND ROGA, LLP

By:

SUSAN M. FREEMAN, ESQ.
ROB CHARLES, ESQ.
3993 Howard Hughes Parkway, 6th Floor
Las Vegas, Nevada 89109
*Counsel for the Official Committee
of Unsecured Creditors of USA Commercial
Mortgage Company*

Approved/Disapproved by:

SHEA & CARLYON, LTD.

By:

JAMES PATRICK SHEA, ESQ.
CANDACE C. CARLYON, ESQ.
SHLOMO S. SHERMAN, ESQ.
233 South Fourth Street, 2d Floor
Las Vegas, Nevada 89101
*Special Nevada Counsel for the Official
Committee of Equity Security Holders of USA
Capital First Trust Deed Fund, LLC*

Approved/Disapproved by:

SNELL & WILMER

By:

ROBERT KINAS, ESQ.
MEREDITH STRAND, ESQ.
3800 Howard Hughes Pkwy., 7th Floor
Las Vegas, Nevada 89119
Counsel for Norman Kiven

Approved/Disapproved by:

JONES VARGAS

By:

JANET CHUBB, ESQ.
100 W. Liberty, 12th Floor
Reno, Nevada 89501
Counsel for Direct Lenders-Beneficiary

SCHWARTZ & MCPHERSON LAW FIRM

2850 South Jones Boulevard, Suite 1
Las Vegas, Nevada 89146-5308
Tel: (702) 228-7590 · Fax: (702) 892-0122

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Approved/Disapproved by:

ORRICK, HERRINGTON & SUTCLIFFE LLP

By: _____
 MARC A. LEVINSON, ESQ.
 LYNN TRINKA ERNCE, ESQ.
 400 Capitol Mall, Suite 3000
 Sacramento, California 95814-4407
*Counsel for the Official Committee of Equity
 Security Holders of USA Capital Diversified
 Trust Deed Fund, LLC*

Approved/Disapproved by:

STUTMAN TREISTER & GLATT, P.C.

By: _____
 FRANK A. MEROLA, ESQ.
 EVE KARASIK, ESQ.
 CHRISTINE PAJAK, ESQ.
 1901 Avenue of the Stars, 12th Floor
 Los Angeles, California 90067
*Counsel for the Official Committee of Equity
 Security Holders of USA Capital First Trust
 Deed Fund LLC*

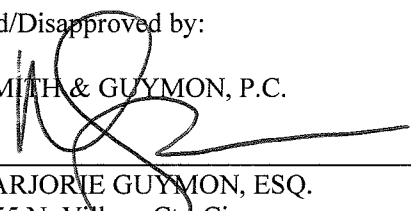
Approved/Disapproved by:

LIONEL SAWYER & COLLINS

By: _____
 LAUREL E. DAVIS, ESQ.
 300 S. Fourth Street, #1700
 Las Vegas, Nevada 89101
Counsel for Scott Canepa

Approved/Disapproved by:

GOLDSMITH & GUYMON, P.C.

By:  _____
 MARJORIE GUYMON, ESQ.
 2055 N. Village Ctr. Cir.
 Las Vegas, Nevada 89134
Counsel for Mountain West Mortgage, LLC

Approved/Disapproved by:

LEWIS AND ROCA, LLP

By: _____
 SUSAN M. FREEMAN, ESQ.
 ROB CHARLES, ESQ.
 3993 Howard Hughes Parkway, 6th Floor
 Las Vegas, Nevada 89109
*Counsel for the Official Committee
 of Unsecured Creditors of USA Commercial
 Mortgage Company*

Approved/Disapproved by:

SHEA & CARLYON, LTD.

By: _____
 JAMES PATRICK SHEA, ESQ.
 CANDACE C. CARLYON, ESQ.
 SHLOMO S. SHERMAN, ESQ.
 233 South Fourth Street, 2d Floor
 Las Vegas, Nevada 89101
*Special Nevada Counsel for the Official
 Committee of Equity Security Holders of USA
 Capital First Trust Deed Fund, LLC*

Approved/Disapproved by:

SNELL & WILMER

By: _____
 ROBERT KINAS, ESQ.
 MEREDITH STRAND, ESQ.
 3800 Howard Hughes Pkwy., 7th Floor
 Las Vegas, Nevada 89119
Counsel for Norman Kiven

Approved/Disapproved by:

JONES VARGAS

By: _____
 JANET CHUBB, ESQ.
 100 W. Liberty, 12th Floor
 Reno, Nevada 89501
Counsel for Direct Lenders-Beneficiary

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Approved/Disapproved by:

ORRICK, HERRINGTON & SUTCLIFFE LLP

By:

MARC A. LEVINSON, ESQ.
LYNN TRINKA ERNCE, ESQ.
400 Capitol Mall, Suite 3000
Sacramento, California 95814-4407
*Counsel for the Official Committee of Equity
Security Holders of USA Capital Diversified
Trust Deed Fund, LLC*

Approved/Disapproved by:

STUTMAN TREISTER & GLATT, P.C.

By:

FRANK A. MEROLA, ESQ.
EVE KARASIK, ESQ.
CHRISTINE PAJAK, ESQ.
1901 Avenue of the Stars, 12th Floor
Los Angeles, California 90067
*Counsel for the Official Committee of Equity
Security Holders of USA Capital First Trust
Deed Fund LLC*

Approved/Disapproved by:

LIONEL SAWYER & COLLINS

By:

LAUREL E. DAVIS, ESQ.
300 S. Fourth Street, #1700
Las Vegas, Nevada 89101
Counsel for Scott Canepa

Approved/Disapproved by:

GOLDSMITH & GUYMON, P.C.

By:

MARJORIE GUYMON, ESQ.
2055 N. Village Ctr. Cir.
Las Vegas, Nevada 89134
Counsel for Mountain West Mortgage, LLC

Approved/Disapproved by:

LEWIS AND ROCA, LLP

By:

SUSAN M. FREEMAN, ESQ.
ROB CHARLES, ESQ.
3993 Howard Hughes Parkway, 6th Floor
Las Vegas, Nevada 89109
*Counsel for the Official Committee
of Unsecured Creditors of USA Commercial
Mortgage Company*

Approved/Disapproved by:

SHEA & CARLYON, LTD.

By:

JAMES PATRICK SHEA, ESQ.
CANDACE C. CARLYON, ESQ.
SHLOMO S. SHERMAN, ESQ.
233 South Fourth Street, 2d Floor
Las Vegas, Nevada 89101
*Special Nevada Counsel for the Official
Committee of Equity Security Holders of USA
Capital First Trust Deed Fund, LLC*

Approved/Disapproved by:

SNELL & WILMER

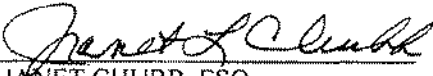
By:

ROBERT KINAS, ESQ.
MEREDITH STRAND, ESQ.
3800 Howard Hughes Pkwy., 7th Floor
Las Vegas, Nevada 89119
Counsel for Norman Kiven

Approved/Disapproved by:

JONES VARGAS

By:


JANET CHUBB, ESQ.
100 W. Liberty, 12th Floor
Reno, Nevada 89501
Counsel for Direct Lenders-Beneficiary

SCHEWARTZ & MCPHERSON LAW FIRM
2850 South Jones Boulevard, Suite 1
Las Vegas, Nevada 89146-5308
Tel: (702) 228-7590 - Fax: (702) 892-0122

Jun. 22, 2006 2:37PM

SCHWARTZER & MCPHERSON

No. 3029 P. 8/8

ORDER APPROVING MOTION AUTHORIZING DEBTOR, PURSUANT TO 11 U.S.C. § 105 AND § 363(b)(1), TO ACCEPT LOAN PAYMENT PROCEEDS AND PROVIDE PARTIAL OR FULL RELEASES IN CONNECTION WITH THE SALE OF PROPERTIES SECURING LOANS ORIGINATED BY THE DEBTOR TO THIRD-PARTY BORROWERS, AND TO RATIFY PARTIAL RELEASES PREVIOUSLY PROVIDED BY THE DEBTOR [AFFECTS USA COMMERCIAL MORTGAGE CO.]

Approved/Disapproved by:

Approved/Disapproved by:

BEST BEST & KRIEGER

HALE LANE PEEK DENNISON & HOWARD

By:

By:

FRANKLIN C. ADAMS, ESQ.
3750 University Ave., 4th Flr, Box 1028
Riverside, California 92501
Counsel for James Corison

SCOTT FLEMING, ESQ.
3930 Howard Hughes Pkwy., 4th Flr.
Las Vegas, NV 89109
Counsel for Bank of America

Approved/Disapproved by:

Approved/Disapproved by:

WILLIAM L. MCGIMSEY, P.C.

MARQUIS & AURBACH

By:

By:

WILLIAM L. MCGIMSEY, ESQ.
601 E. Charleston Blvd
Las Vegas, Nevada 89104
Counsel for

DAVID A. COLVIN, ESQ.
1001 Park Run Drive
Las Vegas, Nevada 89145
Counsel for Harvey Family Trust dated April
13, 1987

Approved/Disapproved by:

Approved/Disapproved by:

MICHAELSON, SUSI & MICHAELSON

LAW OFFICES OF RICHARD MCKNIGHT, P.C.

By:

By:

JAY L. MICHAELSON, ESQ.
7 West Figueroa Street, 2nd Floor
Santa Barbara, California 93101
Counsel for MICHAELSON, SUSI &
MICHAELSON

DAVID MINCIN, ESQ.
RICHARD MCKNIGHT, ESQ.
330 S. Third Street, #900
Las Vegas, Nevada 89101
Counsel for Richard McKnight

Approved/Disapproved by:

Approved/Disapproved by:

By:

By:

NICHOLAS J. SANTORO, ESQ.
400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101
Co-Trustee of the Nicholas and Juanita
Santoro Family Trust

GREGORY J. WALCH, ESQ.
400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101
Counsel for Gregory J. Walch and Shauna M.
Walch

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Jun.22. 2006 10:49AM

SCHWARTZER & MCPHERSON

No.3027 P. 8/8

ORDER APPROVING MOTION AUTHORIZING DEBTOR, PURSUANT TO 11 U.S.C. § 105 AND § 363(d)(1), TO ACCEPT LOAN PAYMENT PROCEEDS AND PROVIDE PARTIAL OR FULL RELEASES IN CONNECTION WITH THE SALE OF PROPERTIES SECURING LOANS ORIGINATED BY THE DEBTOR TO THIRD-PARTY BORROWERS, AND TO RATIFY PARTIAL RELEASES PREVIOUSLY PROVIDED BY THE DEBTOR (AFFECTS USA COMMERCIAL MORTGAGE CO.)

Approved/Disapproved by:

BEST BEST & KRIEGER

By:

FRANKLIN C. ADAMS, ESQ.
3750 University Ave., 4th Flr, Box 1028
Riverside, California 92501
Counsel for James Corlson

Approved/Disapproved by:

HALE LANE PEEK DENNISON & HOWARD

By:

SCOTT FLEMING, ESQ.
3930 Howard Hughes Pkwy., 4th Flr
Las Vegas, NV 89109
Counsel for Bank of America

Approved/Disapproved by:

WILLIAM L. MCGIMSEY, P.C.

By:

WILLIAM L. MCGIMSEY, ESQ.
601 E. Charleston Blvd
Las Vegas, Nevada 89104
Counsel for

Approved/Disapproved by:

MARQUIS & AURBACH

By:

DAVID A. COLVIN, ESQ.
1001 Park Run Drive
Las Vegas, Nevada 89145
Counsel for Harvey Family Trust dated April
13, 1987

Approved/Disapproved by:

MICHAELSON, SUSI & MICHAELSON

By:

JAY L. MICHAELSON, ESQ.
7 West Figueroa Street, 2nd Floor
Santa Barbara, California 93101
Counsel for MICHAELSON, SUSI &
MICHAELSON

Approved/Disapproved by:

LAW OFFICES OF RICHARD MCKNIGHT, P.C.

By:

DAVID MINCIN, ESQ.
RICHARD MCKNIGHT, ESQ.
330 S. Third Street, #900
Las Vegas, Nevada 89101
Counsel for Richard McKnight

Approved/Disapproved by:

By:

NICHOLAS J. SANTORO, ESQ.
400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101
Co-Trustee of the Nicholas and Juanita
Santoro Family Trust

Approved/Disapproved by:

By:

GREGORY J. WALCH, ESQ.
400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101
Counsel for Gregory J. Walch and Shauna M.
Walch

###

1 ALTERNATIVE METHOD re: RULE 9021:

2 In accordance with Local Rule 9021, the undersigned certifies:

3 _____ The court waived the requirements of LR 9021.

4 X I have delivered a copy of this proposed order to all attorneys and unrepresented parties who appeared
at the hearing regarding this matter and/or who filed a written objection and each has:

5 _____ X approved the form of this order:

_____ waived the right to review the order and/or

_____ X failed to file and serve papers in accordance with LR 9021(c)

6 _____ I have delivered a copy of this proposed order to all attorneys and unrepresented parties who appeared
at the hearing regarding this matter and/or who filed a written objection and all have either approved the form of this
7 order, waived the right to review the order, failed to file and serve papers in accordance with LR 9021(c) and the
following have disapproved the form of the order:

8 _____ No opposition was filed to the motion and no other party or counsel appeared at the hearing.

9 ###